IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2757 OF 2006,
CRIMINAL APPLICATION NO.2758 OF 2006,
CRIMINAL APPLICATION NO.2759 OF 2006,
CRIMINAL APPLICATION NO.2760 OF 2006,
CRIMINAL APPLICATION NO.2761 OF 2006,
CRIMINAL APPLICATION NO.2762 OF 2006

Birat Chandra Dagara ...Applicant
(in all the Applications)

vs.

1.The State of Maharashtra
2. M/s.Taurian Exim Pvt.Ltd. ...Respondents
(in all the applications)

Mr.Harshad Bhadbhade for the Applicant in all the Applications.
Mr.L.K.Bajal i/b M/s Bajla, Iyer & Associates for Respondent No.2 in all the matters
Mr.U.V.Nikam A.P.P. in Cri.Appln.Nos. 2757,2758,2759 and 2760/2006 for State
Mr.D.P.Adsule,A.P.P. in Cri.Appln.Nos.2761 and 2762 of 2006

CORAM: A.S.OKA,J.
DATE : NOVEMBER 16,2006.

P.C.:

1. Heard learned Counsel for the Applicant in group of these six applications and the learned Counsel for the second Respondent. The second Respondent has filed six separate complaints against the Applicant under section 138 of the Negotiable Instruments Act, 1881. On the said complaints, the learned Magistrate issued order of process. For challenging the order of process, the Applicant preferred Revision Applications before the Sessions Court. The Revision Applications have been dismissed by the Session court. These are the Applications under section 482 of the Code of Criminal Procedure, 1973 for quashing the complaints.

2. The learned Counsel for the Applicant submitted that all the six complaints arise out of the same alleged transaction. He pointed out that on the basis of the same transaction, a First Information Report has been lodged at the instance of the second Respondent at L.T.Marg Police Station, Mumbai alleging commission of offences under section 406 and 420 of the Indian Penal Code against the Applicant. He stated that the Applicant has deposited with the investigating Officer a sum of Rs.83,00,000/-. He stated that the Applicant has no objection if the said amount is allowed to be withdrawn by the second Respondent. He submitted that the sum of Rs.83,00,000/- deposited by the Applicant with the Investigating Officer is more than sufficient to cover the amount payable under the cheques which are subject matter of the complaints filed under section 138 of the said Act of 1881.

3. Secondly, the learned Counsel for the Applicant invited my attention to a letter dated 22nd September 2002 addressed by the applicant to the second Respondent. He stated that as per the said letter, cheques in the sum of Rs.80,00,000/- and a self cheque in the sum of Rs.18,00,000/- were handed over by the Applicant to the second Respondent through the Managing Director of the second respondent. He pointed out that the said letter records that the cheques were payable on different dates and the Applicant agreed to deposit the demand drafts against the respective cheques before the due date of payment.

He pointed out that the letter records that after the demand drafts are deposited with one Mr.P.B.Sahay, Senior Executive of the second Respondent, relevant cheques will be returned to the Applicant. It is recorded in the said letter that in case the Applicant was not able to procure the demand draft in time, a time of 45 days will be given to the Applicant. He submitted that the cheques were issued by the Applicant only by way of security and in any event the cheques could not have been deposited for a period of 45 days from its due date in view of what was stated in the letter dated 22nd September 2002. He, therefore, submitted that on the dates on which the cheques were deposited by the second Respondent for encashment, there was no existing legally enforceable debt or liability. He, therefore, submitted that the complaints deserve to be quashed on this ground.

4. The learned Counsel for the second Respondent stated that the amount of Rs.83,00,000/- has been accepted by the Investigating Officer though he had no authority to do so. He pointed out that the deposit has been made long after the period provided in notice under section 138 (b) of the said Act of 1881 was over. He submitted that the amount has been deposited long after the date on which offence under section 138 of the said Act of 1881 was complete. He stated that the letter dated 22nd September 2002 which is annexed to the Applications was not a genuine letter. Without prejudice to the said contention he stated that the said letter itself

proves the existence of legal liability of the Applicant and in any event the letter does not say that the cheques cannot be deposited for 45 days from its respective due dates. He submitted that there was no material on record to show that the second Respondent agreed for grace period of 45 days. The learned Counsel for the Applicant replied that the letter dated 22nd September 2002 has been relied upon in the complaints filed by the second Respondent.

5. I have considered the submissions. So far as the first submission of the learned Counsel for the Applicant is concerned, it is obvious that the compliance was not made by the Applicant with the demand notice issued under section 138 (b) of the said Act of 1881 within the period provided in the notice or within the statutory period. Therefore, subsequent deposit of Rs.83,00,000/- by the Applicant and that also with the Investigating Officer who is investigating an offence registered against the Applicant will not help the applicant. In this case, there is no dispute at this stage regarding service of notice of demand and non compliance with the demand within the stipulated time.

6. So far as second contention is concerned, there is no material on record to show that a copy of letter dated 22nd September 2002 annexed to the Application is a true copy of the original. Whether it is a true copy of the original is a matter to be decided after evidence is adduced by the parties.

Apart from this aspect even assuming that the copy of letter is a true copy of the original, whether second Respondent agreed to grant grace period of 45 days to the Applicant is a question which will have to be decided only after the parties lead evidence. At this stage it is very difficult to say that there was an Agreement between the parties that the cheques will not be deposited for a period of 45 days from the respective dates of the cheques.

7. At this stage, only question which is to be examined is whether the complaint read as a whole makes out a case for proceeding against the Applicant for an offence under section 138 of the said Act of 1881. The Apex Court in case of Monaben K. Shah and another Vs. State of Gujrat [(2004) 7 S.C.C. page 15] has held that while construing a complaint under section 138 of the said Act of 1881, hypertechnical approach has to be avoided considering the legislative intent and object of section 138 of the said Act of 1881. The power under section 482 of the Code of Criminal Procedure, 1973 has to be exercised sparingly and with circumspection. In the present case, prima facie, a case of commission of an offence under section 138 of the said Act of 1881 has been made out on the basis of averments in the complaint and the documents filed along with the complaints.

8. No case is made out for quashing the complaints. However, it must be made clear that the observations which are made in

this order are for a limited purpose of examining the case made out by the Applicant for quashing the complaints. Contentions of both the parties on merits of the pending complaints are expressly kept open.

9. Applications are rejected.

JUDGE